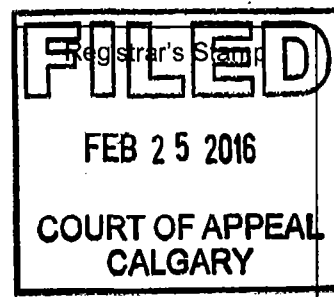


COURT OF APPEAL OF ALBERTA

Form AP-3
[Rule 14.53]



COURT OF APPEAL FILE NUMBER: 1601-0023AC

TRIAL COURT FILE NUMBER: 1501-12220

REGISTRY OFFICE: CALGARY

PLAINTIFF: ALBERTA TREASURY BRANCHES

STATUS ON APPEAL: RESPONDENT

STATUS ON APPLICATION: RESPONDENT

DEFENDANT: CONSERVE OIL 1ST CORPORATION

STATUS ON APPEAL: APPELLANT

STATUS ON APPLICATION: APPLICANT

DEFENDANTS: COGI LIMITED PARTNERSHIP,
CANADIAN OIL & GAS INTERNATIONAL
INC., CONSERVE OIL GROUP INC.

STATUS ON APPEAL: NOT PARTIES TO THE APPEAL

STATUS ON APPLICATION: NOT PARTIES TO THE APPLICATION

**DOCUMENT: APPLICATION OF CONSERVE OIL 1ST CORPORATION
RE: EXTENSION OF APPEAL PERIOD**

APPELLANT'S ADDRESS FOR SERVICE AND CONTACT INFORMATION OF PARTY FILING THIS DOCUMENT: MacPherson Leslie & Tyerman LLP
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File: 055637-0012

RESPONDENT'S CONTACT INFORMATION OF ALL OTHER PARTIES: Blake, Cassels & Graydon LLP
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NOTICE TO RESPONDENT: ALBERTA TREASURY BRANCHES

WARNING

If you do not come to Court on the date and time shown below either in person or by your lawyer, the Court may give the applicant what it wants in your absence. You will be bound by any order that the Court makes. If you intend to rely on other evidence or a memorandum in support of your position when the application is heard or considered, you must file and serve those documents in compliance with the Rules. (Rule 14.41 and 14.43)

NOTICE TO RESPONDENT:

You have the right to state your side of this matter before the Court.

To do so, you must be in Court when the application is heard as shown below:

Date: March 17, 2016
Time: 9:30 a.m.
Where: Court of Appeal of Alberta
Before: Single Judge of the Court (Rule 14.37)

Nature of Application and Relief Sought:

1. Conserve Oil 1st Corporation ("**Amalco**" or the "**Applicant**") seeks an Order:
 - a. extending the time for filing the Civil Notice of Appeal (attached hereto as Schedule "A") of the order of Madam Justice Horner, pronounced January 6, 2016 (the "**Second Receivership Order**"), in Alberta Court of Queen's Bench Action No. 1501-12220 (the "**Action**") to February 3, 2016;
 - b. extending the time for filing Amalco's application for leave to appeal the Second Receivership Order pursuant to section 193(e) of the *Bankruptcy and Insolvency Act*, RSC 1985 c. B-3 to February 24, 2016;
 - c. granting Amalco costs of the within Application; and
 - d. such further and other relief as this Honourable Court deems just and appropriate in these circumstances.

Grounds for making this Application:

2. Amalco is the amalgamation successor of Conserve 1st Oil Corporation ("**COC1**"), Conserve Oil 2nd Corporation ("**COC2**"), Conserve Oil 6th Corporation ("**COC6**") and Conserve Oil 7th Corporation ("**COC7**", collectively with COC1 and COC6, the "**Old GPs**").
3. The Old GPs, who were the general partners of limited partnerships (collectively, the

"Old LPs") that obtained credit facilities from Alberta Treasury Branches ("ATB") in the period December 2011 to September 2012, provided guarantees to ATB (the "Old Guarantees") securing the Old LPs' credit facilities in the aggregate of up to \$28.8 Million (the "Old LPs Credit Facilities").

4. In July 2013, by way of an arrangement agreement: (i) all of the assets and liabilities of the Old LPs, as well as the assets and liabilities of three other limited partnerships were acquired by a new limited partnership, COGI Limited Partnership ("COGI LP"), the general partner of which was Canadian Oil & Gas International Inc. ("COGI GP"); and (ii) the Old LPs were dissolved.
5. In furtherance of the arrangement, effective August 30, 2013: (i) COGI LP entered into a new credit facility with ATB up to the principle amount of \$94.5 Million (the "New Credit Facility"); (ii) COGI LP and COGI GP provided security to ATB securing the whole of the New Credit Facility; (iii) COGI LP and COGI GP confirmed that the security provided by the Old LPs would continue to secure the obligations of COGI LP to ATB; and (iv) the credit facilities relating to the Old LPs were repaid in their entirety and cancelled.
6. On December 20, 2013, Amalco was created. Since its creation, Amalco has had no contractual relationship with ATB.
7. On October 26, 2015, ATB obtained a receivership Order (the "First Receivership Order") appointing a receiver over the assets of COGI LP, COGI GP, and Conserve Oil Group Inc. (collectively, the "Separate Entities").
8. On November 23, 2015, ATB applied for a second receivership Order (the "Second Receivership Order") over the assets of Amalco, an entity unrelated to the Separate Entities.
9. On January 6, 2016, ATB obtained the Second Receivership Order pursuant to the provisions of the *Bankruptcy and Insolvency Act*, RSC 1985, c B-3 (the "BIA"). The Second Receivership Order was granted on the basis that: (i) there was no evidence to infer an intention by ATB that the Old Guarantees would not remain enforceable; (ii) the wording of the Old Guarantees made it clear that ATB could enter into new credit arrangements with the existing customer or corporation carrying on the business of the existing customer; and (iii) the documents relating to the new indebtedness of COGI LP, and related documentation, implied consent by the Old GPs to have their Old Guarantees remain binding.
10. On January 6, 2016, Amalco, through its prior counsel, unsuccessfully applied for a stay of the Second Receivership Order pending appeal.
11. On January 8, 2016, two days after the pronouncement of the Second Receivership Order, Amalco's prior counsel incorrectly advised Amalco that it had 30 days from January 6, 2016 to appeal the Second Receivership Order. Amalco immediately began pursuing alternate counsel to represent it on an appeal of the Second Receivership Order.
12. On January 29, 2016, Amalco retained MacPherson Leslie & Tyerman LLP ("MLT") with respect to the appeal of the Second Receivership Order. On the same date, MLT advised Amalco that the time to file the appeal was 10 days, not 30 days as Amalco had

been previously advised.

13. On February 3, 2016, Amalco filed its appeal of the Second Receivership Order.
14. On February 24, 2016, Amalco filed its application for leave to appeal.
15. The BIA provides that an appeal of an order made under the BIA and an application for leave to appeal, should it be required, must be brought within 10 days after the day of the order appealed from. Amalco filed both its appeal and leave to appeal application outside of the prescribed time period.
16. The Applicant seeks to extend the time period for filing its appeal and application for leave to appeal, and should be permitted to do so as:
 - a. Amalco had a *bona fide* intention to appeal at all material times;
 - b. Amalco has pursued and is pursuing the appeal in the most expedient manner possible, despite a delay in filing the appeal as a result of the erroneous advice from Amalco's then counsel;
 - c. ATB will not be prejudiced by the minor delay in the filing of the appeal or an extension of the time period for appealing;
 - d. Amalco has not benefited from the Second Receivership Order; and
 - e. the low threshold of demonstrating a reasonable chance of success is met by the issues that the Applicant intends to raise on appeal, which issues include that the Chambers Judge erred in her determinations as: (i) the Old Guarantees were ambiguous as to whether they were intended to secure the significantly changes obligations under the New Credit Facility for a new borrower; and (ii) there was substantial evidence before the Chambers Judge from which it could be inferred an intention of ATB that there would be no reliance on the Old Guarantees and that the implied consent of the Old GPs had no reasonable basis in fact.
17. The circumstances of the case at bar (especially the erroneous advice received by Amalco) support the grant of an extension, which grant is in the interests of justice between the parties.
18. Such further and other matters as counsel may advise and this Honourable Court may permit.

Material or evidence to be relied on:

19. The Affidavit of David Crombie, sworn February 16, 2016; the Affidavit of Alex Gramatski, sworn February 16, 2016.
20. Such further and other materials as counsel may advise and this Honourable Court may permit.

Applicable Acts, regulations and rules:

21. The *Bankruptcy and Insolvency Act*, RSC 1985 c B-3, at ss 183(2), 193.
22. The *Bankruptcy and Insolvency General Rules*, Can Reg 368, at r 31(1).
23. The *Alberta Rules of Court*, Alta Reg 124/2010, r 14.37.
24. Such further and other acts, regulations, and rules as counsel may advise and this Honourable Court may permit.

